

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 808 of 1983

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SANTOKBEN WD/O HARJI RAICHAND

Versus

CHANDULAL FULCHAND

Appearance:

MR PK PANCHOLI for Petitioners

MR VC DESAI for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 03/07/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original defendants-tenants, who were sued by the respondent plaintiff-landlord for a decree of eviction under the provisions of the Bombay Rent Act.

2. The landlord had sued the tenants for a decree for eviction on the ground of personal bonafide and reasonable requirement. The trial court, after raising the appropriate issues on the basis of the pleadings in the matter, and after appreciating the evidentiary material on record, found that the landlord bonafide required the premises for his personal use and occupation and further found that the landlord would suffer greater hardship if the decree of eviction is refused, and therefore passed the decree of eviction against the tenants. The tenants, therefore, preferred an appeal under section 29(1) of the Bombay Rent Act, which came to be dismissed and hence the present revision at the instance of the original tenants.

3. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

4. Only a few salient features require to be noted. As per the findings recorded by the two courts below, the landlord had let out the premises (consisting of only open land) to the defendants for the purpose of keeping household articles, dung-cakes and firewood. The bonafide and reasonable requirement professed by the landlord was that he was engaged in the business of trading in cotton and cotton pods, and for the purpose of expanding his existing business, he required the leased premises, which was admittedly an open plot, for the purpose of storing cotton and cotton pods, and also to construct a compound wall and a godown for the purpose of such storage.

5. It was sought to be contended that the evidence on record shows that the defendants-tenants have been in possession of the open land since many years and have been using the leased land for the purpose of tethering cattle, keeping manure, etc., and it is the source of income for them, as against which the plaintiff is a man of means, has a large business income, has access to many sources of finance and can therefore acquire open land anywhere near or about the city of Viramgam. To my mind, this is neither here nor there and the economic disparity between the landlord and the tenant does not in any manner reflect for or against the reasonableness or bonafide requirements of the landlord. Even if it be assumed that the landlord is a man of means and has the financial capacity to purchase another land for the expansion of his business, that by itself is no ground for refusing a decree for eviction, if it is found that his requirements are both bonafide and reasonable.

6. It was sought to be contended that the finding that since early times the tenancy was in respect of joint family property and the documentary evidence on record shows that the plaintiff has been projected as a Karta of the family, is not a finding which can be sustained from the evidence on record. This submission on the part of the petitioners-tenants is merely an attempt to overcome the concurrent findings of fact recorded by the two courts below.

7. Furthermore, the evidentiary material conclusively indicates that neither the defendant nor any member of the family resides in the leased premises, which is an open plot, and in fact they reside in a room which is outside the plot forming the lease premises, and further that the defendants themselves have got other land, in which they can store cow-dung and tether their cattle.

8. There is ample documentary evidence on record to establish that the landlord has obtained permission and licence to start a new business in cotton (at Exh.105 and 106). Furthermore, the plaintiff had also applied for permission to Municipality for construction in the suit plot at Exh.107.

9. The two courts below were, therefore, justified in concluding that the landlord bonafidely and reasonably required the suit premises for expansion of his cotton and cotton pods business and that this was not an idle wish or mere desire.

10. It is also pertinent to note that the question of relative hardship has no bearing on the facts of the case in view of the pleading of the landlord inasmuch as the landlord's case falls under section 13(1)(i), whereas the question of relative hardship is relevant under section 13(2), only where the landlord seeks a decree under section 13(1)(g) of the said Act.

11. To conclude, therefore, the judgement and decree of the lower appellate court, confirming the judgement and decree of the trial court is eminently justified and does not warrant any interference. There is no substance in the present revision and the same is therefore dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

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